

EXHIBIT H

Exhibit H - The Belt Line's Factual Contentions

In addition to the Stipulation of Undisputed Facts submitted by the Parties, Defendant Norfolk & Portsmouth Belt Line Railroad Company's ("the Belt Line") factual contentions include the following:

By providing these contentions, the Belt Line does not concede that all such facts or issues are appropriate for trial. In particular, the Belt Line does not waive any of its motions *in limine*, its joinder in NS's motions *in limine*, or its motion for summary judgment, which, if granted, would render some or all these contentions moot.

The following facts supplement the Stipulated Facts.

1. The Belt Line operates approximately 30 miles of track in Norfolk, Portsmouth, and Chesapeake, Virginia. It also has trackage rights to access other railroad tracks owned by other railroads.
2. Since 1989, CSXT has appointed two members to the Belt Line's Board and NS has appointed three. The Belt Line's President is the sixth voting Board member.
3. The Port of Virginia is the third largest international intermodal container port on the East Coast. Until May 2020, it had three primary terminals at which ocean carriers could load or unload container cargo: Portsmouth Marine Terminal ("PMT"), Virginia International Gateway ("VIG"), and Norfolk International Terminals ("NIT"). All are operated by Virginia International Terminals, LLC ("VIT"), the operating arm of the Virginia Port Authority ("VPA").
4. CSXT and NS can access all three terminals, although only VIG and NIT are currently used for international intermodal container traffic.
5. The Belt Line does not compete with either NS or CSXT to transport intermodal containers to inland destinations.

6. The Belt Line was designed to operate at cost. Its Operating Agreement provides that, “[A] uniform rate shall be fixed for the movement of freight cars over the said [company’s] railroad, regardless of distance ...” The rate may be adjusted from time to time, but only “as to yield a net revenue sufficient to pay the interest upon the bonds outstanding and a dividend of six per cent on the stock.”

7. The Belt Line’s current line haul switching rate, which applies to intermodal traffic, is set forth in its public tariff. The rate is \$210 per loaded railcar well. There is no charge for an empty railcar well.

8. The \$210 switching rate was set by the Belt Line’s Board of Directors at the Board’s December 2009 meeting, following recommendation by a rate committee. It took effect January 1, 2010.

9. The rate committee included representatives from the Belt Line’s management as well as each of the Belt Line’s owners.

10. As required by the Operating Agreement, the switching rate was set at an amount that would cover the Belt Line’s anticipated costs.

11. In sworn deposition testimony, John Booth, CSXT’s Director of Joint Facilities who spent 28 years working with switching railroads throughout the CSXT system, including the Belt Line, described the \$210 rate as “in the neighborhood of what we had been expecting” in 2009, “kind of in the middle of the road,” and “not an unusual number for a terminal switch carrier or an intermediate switch carrier. . .”

12. Since 2010, CSXT has moved tens of thousands of non-intermodal railcars over the Belt Line annually at the \$210 switching rate. For example, in 2018, CSXT paid the Belt Line

\$210 per car to switch over 18,000 cars. In 2019, CSXT paid the Belt Line \$210 per car to switch over 17,000 cars.

13. NS has rail access at NIT over its own track leading into NIT.

14. CSXT can access NIT two ways: (1) by rail via the Belt Line or (2) by truck in the form of drayage.

15. If CSXT drays its containers to or from NIT, it must pay VIT a drayage fee to dray containers between its rail yard and NIT. The current drayage fee is \$130 per container, but VIT subsidizes half, so CSXT is charged only \$65.

16. VIT has subsidized drayage for CSXT at NIT for at least 20 years. There is no cap on the number of containers for which VIT will subsidize CSXT's drayage at NIT. CSXT drayed 34,900 containers to or from NIT in 2017; 31,158 in 2018; and 46,491 in 2019.

17. On July 23, 2010, CSXT sent a letter to the Belt Line proposing that CSXT and the Belt Line enter a contract relating to the Belt Line's movement of CSXT's intermodal traffic to and from NIT ("2010 Rate Proposal"). Among other things, CSXT proposed that it pay the Belt Line a switching rate of \$37.50 per container.

18. No member of the Belt Line's Board, including the CSXT appointees, moved to adopt the 2010 Rate Proposal.

19. With the exception of a single train in 2010, the first time CSXT asked the Belt Line to move intermodal traffic to or from NIT was March 27, 2015. The Belt Line worked with CSXT, NS, and VIT to create an operating window for the move, since the train would travel partly over NS's track, which they established on March 31, 2015. The Belt Line successfully moved the intermodal train on April 1, 2015.

20. In total, the Belt Line moved nine CSXT intermodal trains to and from NIT in 2015, with more than 500 railcars.

21. Tony MacDonald, the head of CSXT's Portsmouth operations in 2015, testified that the plan developed to move CSXT's NIT traffic in 2015 was "workable."

22. For the nine trains that the Belt Line moved for CSXT in 2015, CSXT paid the Belt Line's \$210 tariff rate per loaded railcar well.

23. CSXT has not asked the Belt Line to take any intermodal trains to or from NIT since 2015.

24. The Belt Line has never refused to transport CSXT intermodal trains to or from NIT at its tariff rate.

25. On March 23, 2018, CSXT sent a letter to the Belt Line asking the Belt Line to adopt a special switching rate for CSXT intermodal traffic to and from NIT ("2018 Rate Proposal"). Among other things, CSXT proposed to pay the Belt Line a rate of \$80 per car. CSXT stated that this rate was intended to be a starting point for negotiation of a contract.

26. After receiving the 2018 Rate Proposal, the Belt Line's President, Cannon Moss, conducted a preliminary review of the proposal, consulted with other management at the Belt Line, met with VIT and NS to develop an operating plan, and determined that a rate committee should evaluate the proposal.

27. On April 5, 2018, Mr. Moss responded in writing to CSXT regarding the 2018 Rate Proposal, which included a suggestion for a rate committee to evaluate it. CSXT did not reply.

28. Instead, on April 6, 2018, the next day, CSXT demanded by letter that the Belt Line take certain actions regarding its corporate governance ("2018 Governance Proposal"). CSXT

demanded, among other things, (1) equal representation on the Belt Line's Board, (2) selection of independent directors, and (3) Mr. Moss resign as President.

29. On April 18, 2018, at a meeting of the Belt Line's shareholders, CSXT asked for a vote to restructure the Board. By vote, the shareholders elected not to do so.

30. No member of the Belt Line's Board, including the CSXT appointees, moved to adopt the 2018 Rate Proposal, nor did anyone move to appoint a rate committee to review it.

31. The Belt Line's operating costs are reviewed and approved by its Board each year, then adopted as part of the Belt Line's Annual Report by the shareholders.

32. The Belt Line's \$210 switching rate is at or below the Belt Line's average operating cost per car from 2010 to 2020.

33. Between 2010 and 2020, the Belt Line's average operating cost per car ranged from \$190.36 to \$338.88. The simple average during that period was \$220.38; the weighted average was \$219.27.

34. When compared on a per mile basis, the Belt Line's switching rate per container is lower than the intermodal tariff rates offered by Wilmington Terminal Railroad, Savannah Port Terminal Railroad, Jacksonville Port Terminal Railroad, Port of Mobile Terminal Railway, Palmetto Railways - Charleston Subdivision and North Charleston Subdivision, New Orleans Public Belt Railroad, Galveston Railroad, Brownsville & Rio Grande International Railroad, and Port Jersey Rail.

35. When compared on a per mile basis, the Belt Line's switching rate is also lower than the Commonwealth Railway intermodal tariff rate because the CWRV rate of \$210 per well applies to both loaded and empty wells, whereas the Belt Line rate applies to only loaded wells.

36. Intermodal container traffic can be transported multiple ways, including by rail, truck, or barge. Rail and drayage are the primary competitors for intermodal container traffic.

37. For rail, two to three containers are commonly loaded on a single railcar well. This improves operating efficiency, as more containers in a well lowers the cost per container.

38. As of 2017, CSXT generally achieved an efficiency of 1.67 containers per railcar well on average. Since that time, CSXT's efficiency has improved.

39. Even at an average of 1.67 containers per well, the Belt Line's switching rate is less expensive per container than the cost of unsubsidized drayage.

40. Included in the Belt Line's tariff rate is the trackage rights fee the Belt Line pays NS to access NIT over NS's tracks.

41. Until recently, the trackage rights fee paid by the Belt Line to NS was governed by a Trackage Rights Agreement from 1917, which allowed the Belt Line to access NIT over NS's tracks. On April 16, 2016, NS cancelled that agreement.

42. The Belt Line and NS have not agreed on the trackage rights fee that the Belt Line should pay to NS to access NIT over NS's tracks. The dispute is currently before the Surface Transportation Board, where the Belt Line seeks a lower rate than the one proposed by NS.

43. On October 4, 2018, CSXT sued the Belt Line and NS in this case.

44. The Belt Line reserves the right to include additional contentions and disputed issues of fact and law that may arise due to motions or procedural or substantive rulings of the Court, including any pending or future motions in limine.